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No. 02-1343

In the Supreme Court of the United States

ENGINE MANUFACTURERS ASSOCIATION AND WESTERN STATES PETROLEUM ASSOCIATION, PETITIONERS

v.

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING REVERSAL

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QUESTION PRESENTED

Section 209(a) of the Clean Air Act prohibits, subject to certain exceptions, States and their political subdivisions from adopting "any standard relating to the control of emissions from new motor vehicles." 42 U.S.C. 7543(a). The question presented is whether Section 209(a) prohibits a regional air quality district's rules requiring that operators of certain public and private vehicle fleets purchase specified types of new low-emission vehicles.

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INTEREST OF THE UNITED STATES

The United States, in cooperation with the individual States, has responsibility for implementing and enforcing the Clean Air Act, 42 U.S.C. 7401 *et seq.*, which, among other things, directs the United States Environmental Protection Agency (EPA) to administer provisions governing emissions from mobile sources. This case presents the question whether the Clean Air Act preempts a California regional air quality district from regulating emissions of new motor vehicles through rules restricting the types of vehicles that operators of vehicle fleets may purchase. The United States owns and operates vehicle fleets that are potentially subject to the rules at issue in this case. The United States' predominant interest in this case, however, arises from its responsibility to implement the Clean Air Act in accordance with Congress's carefully drawn division of federal and state authority over the regulation of emissions from motor vehi-

cles. The United States submits that Section 209(a) of the Clean Air Act preempts the regional air quality district's rules because those rules are "standard[s] relating to the control of emissions from new motor vehicles," 42 U.S.C. 7543(a), and California has not requested EPA to provide a waiver of preemption in accordance with Section 209(b), 42 U.S.C. 7543(b).

STATEMENT

Petitioners, the Engine Manufacturers Association and the Western States Petroleum Association, brought this action to enjoin the State of California's South Coast Air Quality Management District (SCAQMD) from implementing its "Fleet Rules," which regulate, on the basis of emission characteristics, the types of new motor vehicles that operators of certain vehicle fleets may purchase. Petitioners claim that the Clean Air Act (CAA), 42 U.S.C. 7401 *et seq.*, prohibits state and local authorities from promulgating those regulations. On cross-motions for summary judgment, the United States District Court for the Central District of California rejected petitioners' preemption challenge. Pet. App. 3a-27a. The court of appeals affirmed for the reasons stated in the district court's opinion. *Id.* at 1a-2a.

A. The Clean Air Act

Congress enacted the Clean Air Act in 1963 to assist state efforts to control air pollution. See Act of Dec. 17, 1963, Pub. L. No. 88-206, 77 Stat. 392. Since that time, Congress has substantially expanded the Act's scope and the federal government's role, primarily through significant amendments in 1967, 1970, 1977, and 1990. See Air Quality Act of 1967, Pub. L. No. 90-148, 81 Stat. 485; Clean Air Amendments of 1970, Pub. L. No. 91-604, 84 Stat. 1676; Clean Air Act Amendments of 1977, Pub. L. No. 95-95, 91 Stat. 685; Clean Air Act Amendments of 1990, Pub. L. No. 101-549, 104 Stat. 2399. Throughout that evolution, the Clean Air Act has remained a

program of cooperative federalism, under which "the States and the Federal Government [are] partners in the struggle against air pollution." *General Motors Corp.* v. *United States*, 496 U.S. 530, 532 (1990).

Title I sets out a central part of the Clean Air Act's regulatory framework, which rests on the federal government's establishment of "national ambient air quality standards" (NAAQSs) that are to be achieved, in substantial part, through each State's development of a "State implementation plan" (SIP). See CAA §§ 101-110, 42 U.S.C. 7401-7410. Title I addresses numerous aspects of air pollution control, including measures and timetables for achieving the NAAQSs in "non-attainment areas." See CAA §§ 171-193, 42 U.S.C. 7501-7515. Title II governs control of pollution from mobile sources, such as motor vehicles. See CAA §§ 201-250, 42 U.S.C. 7521-7590. The Title II provisions are the focus of this litigation.[1]

In the case of each of those Titles, Congress gave careful attention to the respective roles of the federal and state or local governments in administering the Clean Air Act. As a general matter, Congress assigned to EPA significant responsibilities for administering the Clean Air Act, while preserving each State's authority to supplement the Act's provisions with additional measures under state law. Congress, however, placed special limits on state authority in the case of mobile emission sources. Hence, Title I's general provision governing "Retention of State authority" recognizes that, while States largely retain the right to adopt or enforce pollution control measures more stringent than federal law requires, Title II's provisions preempt "certain

[1] The Clean Air Act includes five other titles addressing: general provisions, including definitions (Tit. III, 42 U.S.C. 7601-7627); noise pollution (Tit. IV, 42 U.S.C. 7641-7642); acid deposition control (Tit. IV-A, 42 U.S.C. 7651-7651o); permits (Tit. V, 42 U.S.C. 7661-7661f); and stratospheric ozone protection (Tit. VI, 42 U.S.C. 7671-7671q).

State regulation of moving sources." CAA § 116, 42 U.S.C. 7416.

Title II's provisions delineate the division between federal and state authority over emissions from new motor vehicles. Section 202(a)(1) specifically directs EPA to establish "standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines." 42 U.S.C. 7521(a)(1). Section 209(a) further provides, in relevant part, that:

> No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part.

42 U.S.C. 7543(a).

Section 209(b) authorizes EPA to waive application of that provision, subject to specific requirements, in the case of

> any State which has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966.

42 U.S.C. 7543(b). The only State that qualifies to seek such a waiver is California. See *Motor Vehicle Mfrs. Ass'n* v. *New York State Dep't of Envt'l Conservation*, 79 F.3d 1298, 1302 (2d Cir. 1996); S. Rep. No. 403, 90th Cong., 1st Sess. 33 (1967). Section 177 of the Clean Air Act provides, however, that States other than California may adopt any standards that EPA has approved for California, provided that such state standards are "identical" to those of California and are enacted two years before they become effective. 42 U.S.C. 7507.

Section 209(d) preserves the ability of States to regulate motor vehicle use and operation other than by standards

relating to the control of emissions from new vehicles, stating:

> Nothing in this part shall preclude or deny to any State or political subdivision thereof the right otherwise to control, regulate or restrict the use, operation, or movement of registered or licensed motor vehicles.

42 U.S.C. 7543(d). Consistent with Section 209(d), Section 108(f) requires that EPA provide state and local governments with information on a detailed list of specific types of "transportation control measures," 42 U.S.C. 7408(f), and Section 182 provides additional measures that States may (or must) put into effect, including "Motor vehicle inspection and maintenance" programs, *e.g.*, 42 U.S.C. 7511a(b)(4), and an "economic incentive program," 42 U.S.C. 7511a(g)(4).

In Sections 241 through 250, added through the 1990 Amendments, Congress established a "clean-fuel vehicle" program that combines elements of federal and state authority, consistent with the division of authority set out in Section 209. See 42 U.S.C. 7581-7590. Congress directed EPA to issue regulations defining emissions standards for "clean-fuel vehicles." CAA §§ 242-245, 42 U.S.C. 7582–7585. Congress in turn directed States that embraced specified non-attainment areas to develop and submit revisions to their SIPs establishing clean-fuel fleet programs (CFFPs). CAA § 246, 42 U.S.C. 7586. Section 246(b) provides that, under those state programs, a defined percentage (beginning at 30% and later increasing to 70%) "of all new covered fleet vehicles in model year 1998 and thereafter * * * shall be clean-fuel vehicles and shall use clean alternative fuels when operating in the covered area." 42 U.S.C. 7586(b). Congress has authorized States to seek EPA approval of substitute programs in lieu of the federal clean-fuel vehicle program. CAA § 182(c)(4)(A), 42 U.S.C. 7511a(c)(4)(A). Only four States that are subject to the CFFP requirement have

implemented the program; the others, including California, have elected to adopt substitute programs. See, *e.g.*, 64 Fed. Reg. 46,849 (1999).[2]

B. The California Regulatory Scheme

The State of California has charged the California Air Resources Board (CARB) with responsibility to administer that State's air pollution control programs. Cal. Health & Safety Code § 39003 (West 1996). CARB has developed a detailed program of emission controls for new motor vehicles. See Cal. Code. Regs. tit. 13, §§ 1950 *et seq.* (2003). CARB has also applied for and generally received EPA waivers for particular elements of this program, in accordance with Section 209(a) and (b) of the Clean Air Act, 42 U.S.C. 7543(a) and (b), relieving California from the Clean Air Act's prohibition of state standards "relating to the control of" new motor vehicle emissions. See 68 Fed. Reg. 19,811 (2003); 58 Fed. Reg. 4166 (1993). CARB's authority to adopt its program of emission controls has not been disputed in this proceeding.

CARB has adopted, among its various motor vehicle controls, a light- and medium-duty vehicle program that includes five tiers of emissions standards for passenger cars, light-duty trucks, and medium-duty vehicles: (1) transitional low-emission vehicles, or TLEVs; (2) Low-Emission Vehicles, or LEVs; (3) Ultra-Low-Emission Vehicles, or ULEVs;

[2] Congress also directed EPA to establish, as a pilot program, a federal clean-fuel vehicle program for California that would "demonstrate the effectiveness of clean-fuel vehicles in controlling air pollution in ozone nonattainment areas." CAA § 249, 42 U.S.C. 7589. Section 249(c) directs EPA to issue regulations requiring manufacturers to produce specified numbers of clean-fuel vehicles (not necessarily for fleet use) and sell them in California, 42 U.S.C. 7589(c)(1), and requiring California to adopt provisions making clean alternative fuels available in that State, 42 U.S.C. 7589(c)(2). Other States may participate in this program under specified conditions, CAA § 249(f), 42 U.S.C. 7589(f), but no State has elected to do so.

(4) Super Ultra-Low-Emission Vehicles, or SULEVs; and (5) zero-emission vehicles, or ZEVs. See Pet. App. 13a-14a; Cal. Code. Regs. tit. 13, § 1960.1 (2003). California has also established an Urban Bus Program, which provides that operators of urban bus fleets must notify CARB whether they intend to comply through a "diesel path" or through an "alternative-fuel path," and defines emissions standards for those "paths." See Pet. App. 14a-15a; Cal. Code Regs., tit. 13, §§ 1956.2 *et seq.* (2003).

C. The SCAQMD Fleet Rules

The State of California has assigned the South Coast Air Quality Management District (SCAQMD) responsibility for controlling air pollution in the Los Angeles area, which is the only region in the United States that has been designated an "extreme" nonattainment area under the Clean Air Act. See 40 C.F.R. 81.305. In response to Los Angeles's extraordinary air pollution problems, the SCAQMD has adopted extensive control measures, including the AQMD Fleet Vehicle Rules (updated May 4, 2001) (Fleet Rules) <http://www.aqmd.gov/news1/Fleet_Rule_Home.htm>. The Fleet Rules, which SCAQMD adopted in 2000, require that operators of certain motor vehicle fleets purchase or lease low-emission vehicles. Six of those rules are at issue here:

- Rule 1186.1 requires public operators of street sweeper fleets (and private parties operating under contract to public entities) to acquire alternative-fuel vehicles.

- Rule 1191 requires public entities operating fleets of passenger cars, light-duty trucks, or medium-duty vehicles to acquire vehicles that meet LEV standards or that utilize alternative fuel.

- Rule 1192 requires public transit fleet operators (and private entities under contract to such operators) to acquire alternative-fuel heavy-duty vehicles.

- Rule 1193 requires public and private solid waste collection fleet operators to acquire alternative-fuel heavy-duty vehicles.

- Rule 1194 requires public and private operators of fleets of passenger cars or medium-duty vehicles that transport passengers to and from airports (including taxis, limousines, and shuttles) to acquire specified percentages of ULEVs, SULEVs or ZEVs. Heavy-duty vehicles acquired by operators of airport transport fleets must utilize alternative fuel.

- Rule 1196 requires public entities operating fleets of heavy-duty vehicles to acquire vehicles that utilize alternative fuel, dual fuel, or gasoline.

Pet. App. 15a-19a; J.A. 16-74. Those rules generally apply only to entities operating fleets of 15 or more vehicles. See *ibid.* Several of the rules provide for exceptions if the required types of vehicles are unavailable. See Pet. App. 18a-19a; Rules 1186.1(e), 1191(f)(8) (J.A. 21, 30). Some of the rules also have phase-in periods or other provisions that mitigate their application. Rule 1186.1 (permitting transitional use of diesel street sweepers) (J.A. 16); Rule 1193 (permitting fleets of fewer than 50 refuse collection vehicles to acquire dual-fuel vehicles) (J.A. 52). The rules contain no exemption for vehicle fleets owned or operated by the United States or its instrumentalities. See, *e.g.*, Rule 1191(b) (specifically listing "federal" fleets as among those subject to the rule) (J.A. 24).

D. The Proceedings Below

Petitioners assert that Section 209(a) of the Clean Air Act preempts the SCAQMD's Fleet Rules because each of those rules is a "standard relating to the control of emissions from new motor vehicles." 42 U.S.C. 7543(a). Petitioners and SCAQMD each moved for summary judgment, stipulating that no material facts were in dispute. Pet. App. 19a-20a. The district court granted summary judgment to defendants. *Id.* at 20a-27a.

The district court concluded that the Fleet Rules "impose no new emission requirements on manufacturers whatsoever, and therefore do not run afoul of Congress's purpose behind motor vehicle preemption: namely, the protection of manufacturers against having to build engines in compliance with a multiplicity of standards." Pet. App. 21a. The district court further reasoned that the Fleet Rules "do not set a 'standard relating to the control of emissions'" because, "[r]ather than imposing any numerical control on new vehicles, the rules regulate the purchase of previously-certified vehicles." *Ibid.* In so stating, the court attached significance to the fact that the SCAQMD's Fleet Rules allow purchase of a subset of those vehicles that CARB, with EPA's approval, had certified for sale in California. *Id.* at 21a-22a; see pp. 6-7, *supra*.

The district court recognized that the First Circuit in *Association of International Automobile Manufacturers, Inc.* v. *Commissioner*, 208 F.3d 1 (2000), and the Second Circuit in *American Automobile Manufacturers Ass'n* v. *Cahill*, 152 F.3d 196 (1998), had each treated a state sales requirement of ZEV vehicles as a "standard 'relating to the control of emissions.'" Pet. App. 22a. The district court distinguished the SCAQMD's Fleet Rules on the ground that each rule regulates "the *purchase* of vehicles * * * from among a subset of previously certified California vehicles"

and "does not compel manufacturers to meet a new emissions limit." *Id.* at 23a.

The district court also found support for its conclusion in Section 246 of the Clean Air Act, which authorizes States to develop clean-fuel fleet programs for non-attainment areas. See 42 U.S.C. 7586. The district court reasoned that Section 246 expresses Congress's understanding that States may regulate vehicle fleets. Pet. App. 23a. The district court additionally suggested that the Fleet Rules are state health and safety regulations that are entitled to a presumption of validity. *Id.* at 23a-24a. Finally, the court rejected petitioners' arguments that the Fleet Rules violate Section 177 of the Clean Air Act, 42 U.S.C. 7507, by imposing restrictions that are stricter than EPA has authorized California to impose pursuant to Section 209(b)'s waiver provisions. Pet. App. 24a-27a.

The court of appeals issued an order affirming the district court's decision for the reasons stated in the district court's opinion, Pet. App. 1a-2a, and denied petitions for rehearing and rehearing en banc, *id.* at 28a-29a.

SUMMARY OF ARGUMENT

Congress has expressly defined the scope of the Clean Air Act's preemption of state laws regulating new vehicle emissions. Section 209(a) states in relevant part that "[n]o State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles." 42 U.S.C. 7543(a). The SCAQMD's Fleet Rules fall squarely within the terms of Section 209(a)'s prohibition because they impose specific emission-related requirements on new vehicles purchased by fleet operators. Section 209(a) consequently preempts the Fleet Rules unless and until California applies for and receives a waiver of Section 209(a)'s prohibition through Section 209(b). See 42 U.S.C. 7543(b).

A. Section 209(a) preempts a state or local law if that law constitutes "any standard" that "relat[es] to the control of emissions" from "new motor vehicles." 42 U.S.C. 7543(a). Section 209(a)'s reference to "any standard" embraces, by its ordinary and legal meanings, a broad range of regulations, including both quantitative and other emissions criteria that specified vehicles or engines are required to meet. Section 209(a)'s prohibition of standards "relating to the control of emissions" from new vehicles expresses Congress's intent essentially to occupy the field of controlling emissions from those vehicles through standards, except to the extent that Congress has expressly, or by clear implication, authorized state regulation. Congress's extension of preemption only to standards relating to the control of emissions from "new vehicles" identifies the limits of the federal government's largely exclusive sphere and generally preserves state regulation of, for example, the "use, operation, or movement of registered or licensed vehicles." CAA § 209(d), 42 U.S.C. 7543(d).

B. Section 209(a) preempts the SCAQMD's Fleet Rules because they fall squarely within the statutory prohibition. The Fleet Rules are "standard[s] relating to the control of emissions from new motor vehicles," 42 U.S.C. 7543(a), because they require a fleet operator to make purchasing decisions with respect to new vehicles based on their emission characteristics. The Rules cannot be distinguished from concededly invalid state regulations imposing "sales requirements" because a state regulation that restricts what vehicles a resident can purchase correspondingly limits what vehicles a manufacturer can sell. The Fleet Rules cannot be justified on the basis that they merely require purchasers to choose from a subset of vehicles that EPA has approved for sale in California because requiring fleet operators to select vehicles from only that subset is impermissible in the absence of EPA's approval of that added restriction. The

Clean Air Act's specific provisions governing centrally-fueled fleets indicate that Congress did not believe that States would be free to regulate vehicle fleets however they chose. Rather, the Clean Air Act specifically addresses the spheres of federal and state responsibility and provides legislative guidance that supplants general presumptions respecting the validity of state regulations. Under the Clean Air Act's provisions, the State of California may seek EPA approval of the Fleet Rules in accordance with Section 209(b), 42 U.S.C. 7543(b). But unless and until EPA approves the Fleet Rules, they are invalid and may not be enforced.

ARGUMENT

SECTION 209(a) OF THE CLEAN AIR ACT PREEMPTS THE SCAQMD FLEET RULES

Under this Court's settled preemption jurisprudence, "Congress can define explicitly the extent to which its enactments pre-empt state law." *English* v. *General Elec. Co.*, 496 U.S. 72, 78 (1990). Congress has exercised that power through Section 209(a) of the Clean Air Act, which states that "[n]o State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines." CAA § 209(a), 42 U.S.C. 7543(a). Section 209(a) expressly preempts the SCAQMD's Fleet Rules because those rules, which impose emission-related criteria respecting new motor vehicles, qualify as "standard[s] relating to the control of emissions from new motor vehicles." CAA § 209(a), 42 U.S.C. 7543(a). The SCAQMD cannot impose such rules on vehicle fleets unless EPA grants a waiver of Section 209(a)'s prohibition through the process set out in Section 209(b). 42 U.S.C. 7543(b).

A. Section 209(a) Prohibits A State Or Political Subdivision From Adopting "Any Standard Relating To The Control Of Emissions From New Motor Vehicles"

Congress has set out specific conditions for preemption of state or local laws respecting mobile sources of air pollution. Section 209(a), in relevant part, preempts a state or local law if that law constitutes "any standard" that "relat[es] to the control of emissions" from "new motor vehicles." 42 U.S.C. 7543(a). Section 209(a)'s precise terms, particularly when read in light of its statutory context and history, limit the authority of States and their subdivisions to control motor vehicle emissions through regulation of the design, production, sale, purchase, or licensing of new vehicles.

1. Section 209(a)'s reference to "any standard" necessarily denotes that federal preemption reaches an extensive range of regulatory activities. The term "standard," in ordinary usage and legal parlance, embraces a broad variety of criteria or rules. For example, *Webster's Third New International Dictionary* (1993), defines a "standard," in pertinent part, as including:

> **3 a:** something that is established by authority, custom, or general consent as a model or example to be followed: CRITERION, TEST **b:** a definite level or degree of quality that is proper and adequate for a specific purpose;
>
> **4:** something that is set up and established by authority as a rule for the measure of quantity, weight, or quality * * *; [and]
>
> **7 a:** a carefully thought-out method of performing a task <auditing ~*s*> **b:** carefully drawn specifications covering manufacturing material or equipment.

Id. at 2223. *Black's Law Dictionary* (7th ed. 1999) similarly defines the term "standard" to include a "criterion for meas-

uring acceptability, quality, or accuracy." *Id.* at 1412-1413. See *Black's Law Dictionary* 1259 (5th ed. 1979) ("A measure or rule applicable in legal cases such as the 'standard of care' in tort actions.").

The Clean Air Act uses the term "standard" in various contexts to include a wide array of regulatory provisions. That usage reflects Congress's understanding that the term has a broad, encompassing meaning that conforms to the structure and purpose of the provision in which it is used. For example, the Act directs EPA to prescribe "ambient air quality standards," CAA § 109, 42 U.S.C. 7409, which are regulations specifying health-and-welfare-based levels for the "maximum airborne concentration of a pollutant." *Whitman* v. *American Trucking Ass'ns*, 531 U.S. 457, 465 (2001). The Act also directs EPA to establish "standards of performance" for certain pollution sources, *e.g.*, CAA § 111, 42 U.S.C. 7411, which include not only "a requirement of continuous emission reduction," but "any requirement relating to the operation or maintenance of a source to assure continuous emission reduction," CAA § 302(*l*), 42 U.S.C. 7602(*l*). The Act further directs EPA to establish "emission standards" for certain stationary sources, *e.g.*, CAA §§ 112(c)(2), 42 U.S.C. 7412(c)(2), which include not only "requirement[s]" that "limit[] the quantity, rate, or concentration of emissions of air pollutants on a continuous basis," but also "any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard promulgated under this chapter," CAA § 302(k), 42 U.S.C. 7602(k).

Congress did not define the term "standard" for purposes of Section 209(a), but it also expressed no intent in Section 209(a) to limit that provision's preemptive effect to particular types of standards, such as numerical specifications for tailpipe emissions. If Congress had intended that result, it

could have easily said so. Rather, both the ordinary and the legal definitions of "standard," coupled with Congress's varied usage of that term throughout the Clean Air Act, demonstrate that Section 209(a)'s reference to "any standard" is constrained primarily by context and embraces both quantitative and non-quantitative emission criteria that new vehicles and engines are required to meet.[3]

2. Section 209(a) prohibits States and their subdivisions from adopting any standard "relating to the control of emissions" from new motor vehicles or new motor vehicle engines. 42 U.S.C. 7543(a). This Court has previously treated the term "relate to," in the context of federal preemption statutes, as prohibiting state laws that have "a connection with or reference to" the federal statute's predicate. See *Egelhoff* v. *Egelhoff*, 532 U.S. 141, 147 (2001) ("state law relates to an ERISA plan 'if it has a connection with or reference to such a plan'") (quoting *Shaw* v. *Delta Air Lines, Inc.*, 463 U.S. 85, 97 (1983)); *Morales* v. *Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992) ("Since the relevant language of the ADA is identical, we think it appropriate to adopt the same standard here."). The Clean Air Act's use of the phrase "relating to" is indistinguishable. Section 209(a) accordingly prohibits those state or local standards that

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[3] As an historic matter, both EPA and Congress have expressed the understanding that the term "standard" is not limited to quantitative measures of tailpipe emissions for particular vehicles. In promulgating "standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles" pursuant to Section 202(a)(1), 42 U.S.C. 7521(a)(1), EPA has shifted from typically specifying defined emissions criteria for particular classes of vehicles to also allowing manufacturers to choose what mix of vehicles to produce to attain fleetwide averages. See 65 Fed. Reg. 6698 (2000); 50 Fed. Reg. 10,606 (1985). In the 1990 Clean Air Act Amendments, Congress enacted Section 202(g), which directed EPA to issue standards under Section 202(a) that phased in new emissions criteria over specified percentages of a manufacturer's sales volume, again indicating that the term "standards" is not limited to quantitative tailpipe emissions requirements for individual vehicles.

"ha[ve] a connection with or reference to" controlling emissions from new motor vehicles. *Egelhoff*, 532 U.S. at 147.

Section 209(a)'s "relating to" formulation is, by its terms, broadly encompassing. See, *e.g.*, *Morales*, 504 U.S. at 383-384 (the phrase "relating to" expresses "a broad pre-emptive purpose"). Nevertheless, that formulation should not be applied with such "uncritical literalism" that it would reach through "infinite connections" to state or local regulation that bears only the most attenuated relationship to controlling emissions from new motor vehicles. See *Egelhoff*, 532 U.S. at 147; *California Div. of Labor Standards Enforcement* v. *Dillingham Constr., N.A., Inc.*, 519 U.S. 316, 325 (1997); *New York State Conference of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514 U.S. 645, 656 (1995). Rather, Section 209(a) expresses Congress's understanding that it has "largely pre-empted the field with regard to 'emissions from new motor vehicles,'" *Washington* v. *General Motors Corp.*, 406 U.S. 109, 114 (1972). See *Egelhoff*, 532 U.S. at 152-153 (Scalia, J., concurring) (suggesting that ERISA's "relate to" formulation constitutes "a reference to our established jurisprudence concerning conflict and field pre-emption"); *Dillingham Constr., N.A., Inc.*, 519 U.S. at 336 (Scalia, J. concurring) (the "relate to" formulation "identif[ies] the field in which ordinary *field pre-emption* applies"); cf. *Crosby* v. *National Foreign Trade Council*, 530 U.S. 363, 372 n.6 (2000) (stating that "'*field*' preemption may fall into any of the categories of express, implied, or conflict preemption").

The scope of Section 209(a)'s preemptive effect should be measured by reference to Congress's objectives. See *Egelhoff*, 532 U.S. at 147; *Dillingham*, 519 U.S. at 325. Congress affirmatively assigned the federal government central responsibility for developing standards for controlling emissions from new motor vehicles. See, *e.g.*, CAA § 202, 42 U.S.C. 7521. Alternative state or local rules that effectively

establish emission criteria for such vehicles, whether through equivalent or alternative methods, are at the core of standards "relating to the control of emissions." CAA § 209(a), 42 U.S.C. 7543(a). Whatever its ultimate reach, Section 209(a) surely prohibits a State or its political subdivision from unilaterally promulgating regulations that would effectively subject new vehicle manufacturers and the prospective purchasers of those vehicles to an additional set of emission-based limitations.

Viewed in that light, Section 209(a) generally preempts state or local regulations that require new motor vehicles to satisfy quantitative or non-quantitative emissions criteria as a condition of sale or licensing. Such requirements constitute standards relating to the control of emissions from such vehicles that, contrary to Section 209(a)'s core objective, burden the design and production of new motor vehicles. See pp. 19-21, *infra*.[4]

3. Section 209(a) broadly prohibits any standard relating to the control of emissions, but only if those emissions are emitted from "new motor vehicles or new motor vehicle engines." 42 U.S.C. 7543(a). That limitation imposes a significant restriction on the scope of Section 209(a)'s preemptive effect. Section 209(a) expressly preempts state regulation—including "certification, inspection, or any other ap-

[4] By contrast, Section 209(a) would not generally reach state voluntary or incentive programs that merely encourage vehicle manufacturers to sell, or consumers to buy, vehicles with particular emission characteristics. Such programs are not within the meaning of the term "standard," as used in Section 209(a), because they they do not impose "enforce[able]" requirements. See CAA § 209(a), 42 U.S.C. 7543(a). So long as such a program were not structured in such a way as to create substantial barriers to market entry, it would not interfere with Section 209(a)'s core objective of preventing disruption of the nationwide market for new motor vehicles. See, *e.g.*, *Egelhoff*, 532 U.S. at 147 (evaluating the "objectives" of the federal statute and the "nature of the effect of the state law" as "a guide to the scope of the state law that Congress understood would survive").

proval relating to the control of emissions from any new motor vehicle"—up to and including the point of the "initial retail sale, titling (if any), or registration of such vehicle." 42 U.S.C. 7543(a). See CAA § 216(3), 42 U.S.C. 7550(3) (defining a "new motor vehicle" as "a motor vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser"). States and their political subdivisions may require that used vehicles be retrofitted with emissions control devices, but they may not exercise their authority in a manner that would, in practical effect, establish an emissions standard for new motor vehicles. See *Allway Taxi, Inc.*, v. *City of New York*, 340 F. Supp. 1120, 1124 (S.D.N.Y. 1972), aff'd, 468 F.2d 624 (2d Cir. 1972) (per curiam). States and their political subdivisions also remain free to "control, regulate, or restrict the use, operation, or movement of registered or licensed motor vehicles," CAA §209(d), 42 U.S.C. 7543(d), subject to the application of implied preemption principles. See 340 F. Supp. at 1124; cf. *California* v. *Department of the Navy*, 624 F.2d 885, 888 (9th Cir. 1980).[5]

[5] The Clean Air Act elsewhere recognizes a State's authority to regulate the use of vehicles. For example, Section 108(f) refers to a list of state transportation control measures, and Section 182(g)(4) states that States have some authority to adopt incentive programs. See 42 U.S.C. 7408(f), 7511a(g)(4). A State's authority under those provisions, however, is not unlimited. For example, an incentive program or related state initiative may well be preempted if it frustrates Section 209(a)'s purpose by acting as a substantial barrier to the entry of new motor vehicles into the marketplace. Other provisions of the Clean Air Act may signal further limitations on the ability of States to adopt incentive programs. For example, Section 249(f)(3), 42 U.S.C. 7589(f)(3), sets forth a list of incentives States may offer to induce participation in a clean-fuel vehicle pilot test program, which would seem to have little function if incentives were generally available to States without restriction. Whatever the scope of a State's ability to adopt incentive programs, however, the Fleet Rules cannot be justified on that basis, because they prohibit market entry by mandating particular purchases based on emission criteria. They are "standards" and not incentive programs.

4. The text of Section 209(a) manifests the division of federal and state authority reflected throughout the Clean Air Act's mobile emissions provisions. Those provisions reflect Congress's judgment that the federal government should exercise primary responsibility for developing strategies for controlling emissions from new vehicles, while States may exercise a restricted role consistent with federal initiatives and subject to federal guidance, oversight, and approval.

For example, Congress gave the federal government primary responsibility for developing standards to control emissions from new motor vehicles, see CAA § 202(a), 42 U.S.C. 7521(a), while recognizing that the States retain authority to control emissions by regulating the operation and use of vehicles or by establishing emissions criteria for such vehicles once they are no longer new, *e.g.*, CAA §§ 108(f), 182(d)(1) and (e)(4), 42 U.S.C. 7408(f), 7511a(d)(1) and (e)(4) (transportation and traffic control measures); CAA § 182(a)(2)(B), (b)(4), (c)(3), 42 U.S.C. 7511a(a)(2)(B), (b)(4), (c)(3) (vehicle inspection and maintenance measures).

The Clean Air Act's provisions allocating authority between the federal government and the States reflect Congress's understanding of the importance of maintaining uniform standards for new motor vehicles. Nationally uniform regulatory standards provide public benefits by allowing automobile manufacturers to realize economies of scale in producing largely standardized vehicles for sale at affordable prices in all 50 States and the District of Columbia. Section 209 embodies a compromise between the public benefits of a nationally uniform approach to vehicle emission controls and the preference of some States to preserve their traditional role in regulating motor vehicles. Congress opted to employ uniform federal standards for new vehicles, subject to the exception that California may depart from those standards if it satisfies Section 209(b)'s waiver requirements. See H.R.

Rep. No. 728, 90th Cong., 1st Sess. 20-23 (1967); S. Rep. No. 403, 90th Cong., 1st Sess. 33 (1967); 113 Cong. Rec. 30,950 (1967) (statement of Rep. Springer); *id.* at 32,478 (statement of Sen. Murphy); see generally *Motor & Equip. Mfrs. Ass'n* v. *EPA*, 627 F.2d 1095, 1108-1111 (D.C. Cir. 1979) (MEMA), cert. denied, 446 U.S. 952 (1980).

Since that time, Congress has continued to grant the federal government primacy in controlling emissions from new motor vehicles, subject to specific exceptions that preserve the core policy of national uniformity. For example, Congress amended the Clean Air Act in 1977 to allow other States to adopt emissions standards for new motor vehicles "identical" to those EPA has authorized California to employ. See CAA § 177, 42 U.S.C. 7507. Section 177 specifically provides, however, that States choosing to adopt the California emissions standards may not "prohibit or limit, directly or indirectly, the manufacture or sale of a new motor vehicle or motor vehicle engine that is certified in California as meeting California standards" or "take any action of any kind to create, or have the effect of creating, a motor vehicle or motor vehicle engine different than a motor vehicle or engine certified in California under California standards (a 'third vehicle') or otherwise create such a 'third vehicle.'" 42 U.S.C. 7507.[6]

[6] Congress adhered to that policy in adopting the "clean-fuel vehicle" provisions in the 1990 Amendments. See CAA §§ 241-250, 42 U.S.C. 7581-7590. Congress drew the definitions of vehicle classes in these provisions from the standards of California's LEV program. CAA § 243, 42 U.S.C. 7583 (setting forth standards for CFFP vehicles); see Cal. Code Regs. tit. 13, § 1900 (2003). Congress also provided that, if California altered its standards, the new California standards would supersede those set forth in the 1990 Amendments, CAA § 243(e), 42 U.S.C. 7583(e). Congress further required EPA to administer and enforce the CFFP program in the same manner as does the State of California (unless the State's interpretation is inconsistent with the Act's requirements). CAA § 244, 42 U.S.C. 7584. Those provisions all serve to avoid proliferation of new vehicle emissions standards and fragmentation of the market. See generally Henry A. Waxman et al., *Cars, Fuels, and Clean Air: A Legislative History of Title II of the Clean Air Act Amendments of 1990*, 21 Envt'l L. 1947, 1998-2001 (1991).

Section 209(a)'s preemptive prohibitions accordingly play a vital role in effectuating Congress's judgment that the federal government should exercise primary responsibility for controlling emissions from new motor vehicles. Congress recognized that the States can play a complementary role, but they should not be allowed unilaterally to subject new motor vehicles to a variety of uncoordinated emission control requirements that could needlessly fragment the national marketplace for such vehicles. Section 209(a)'s prohibitions, in combination with Section 209(b)'s waiver provision, strike a balance between the national interest in uniform federal requirements and the state interest in developing additional initiatives in response to local conditions.

B. The SCAQMD Fleet Rules Are Standards "Relating To The Control Of Emissions From New Motor Vehicles"

Section 209(a) of the Clean Air Act preempts the SCAQMD's Fleet Rules because those regulations are "standard[s] relating to the control of emissions from new motor vehicles," 42 U.S.C. 7543(a), and the State of California has not sought and obtained a waiver of Section 209(a)'s prohibition through Section 209(b), 42 U.S.C. 7543(b). The Fleet Rules are "standards" because they require fleet operators to purchase new vehicles in accordance with specific emissions criteria that those vehicles must meet. They "relat[e] to the control of emissions" because they restrict a fleet operator's purchasing decisions in order to control new vehicle emissions. Indeed, the Fleet Rules explicitly make reference to the purpose of controlling emissions. See, *e.g.*, Rules 1186.1(a), 1191(a), 1192(a), 1193(a), 1194(a), 1196(a) (J.A. 16, 24, 46, 52, 58, 66). And the Rules incontrovertibly apply to all purchases, including *new* vehicle purchases. See,

e.g., Rules 1186.1(d), 1191(e), 1192(d), 1193(d), 1194(d), 1196(d) (J.A. 19, 27, 48, 54, 61, 68). The Fleet Rules therefore fall squarely within Section 209(a)'s prohibition and cannot be adopted or enforced without first obtaining EPA's waiver of that prohibition through Section 209(b).

The district court reasoned that the Fleet Rules fall outside of Section 209(a)'s prohibition because, "[r]ather than imposing any numerical control on new vehicles, the rules regulate the purchase of previously-[CARB]-certified vehicles." Pet. App. 21a. The court noted that Section 246 of the Clean Air Act directs States to impose air-quality based restrictions on fleet vehicle purchases in prescribed circumstances, *id.* at 23a, and stated that it "is not rational" to conclude that Section 209(a) would prohibit them in other circumstances. Invoking the principle that state laws regulating public health and safety "are presumed to be valid," the court concluded that "the Fleet Rules do not constitute unlawful standards 'relating to the control of emissions.'" *Id.* at 24a. That reasoning, at each of its critical junctures, is unsound.

1. The district court was mistaken in concluding that the Fleet Rules do not qualify as "standards" for purposes of Section 209(a) because they do not impose "any numerical control" on new vehicles. Pet. App. 21a. As demonstrated above, the Clean Air Act employs the term "standard" in Section 209(a) in its natural sense to reach a broad spectrum of regulatory requirements and criteria beyond specific tailpipe emission limitations. Section 209(a)'s use of the term "standard" necessarily embraces the Fleet Rules, which regulate a fleet operator's purchase or lease of new vehicles based on the numerical emission characteristics (*e.g.*, the LEV and ULEV requirements) or emissions control design characteristics (*e.g.*, the alternative-fuel requirement) of the qualifying new vehicles. See *Association of Int'l Auto. Mfrs.* v. *Commissioner*, 208 F.3d 1, 6-7 (1st Cir. 2000) (*AIAM*);

American Auto. Mfrs. Ass'n v. *Cahill*, 152 F.3d 196, 200 (2d Cir. 1998) (*AAMA*).[7]

The Fleet Rules are in principle no different than requirements specifying that fleet operators may purchase only particular new vehicles that meet specific tailpipe emissions criteria (or incorporate design features that accomplish that result), or that fleet operators may purchase only new vehicles that collectively conform to some fleet-wide average aggregate tailpipe emissions limitation. A State's unilateral imposition of any such requirement would result in a standard for "the control of emissions from new motor vehicles," CAA § 209(a), 42 U.S.C. 7543(a), that would be inconsistent with the Clean Air Act's division of federal and state responsibilities. Section 209(a) preempts such standards regardless of the form of the rule imposing the emission control requirement.

2. The district court's conclusion that Section 209(a) does not preempt the Fleet Rules because they "regulate the purchasing and leasing, not the sale, of vehicles by fleet

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[7] The District of Columbia Circuit stated in *MEMA* that the legislative history of the Clean Air Act "indicates that Congress intended the word 'standards' in Section 209 to mean quantitative levels of emissions rather than regulations involving certification or in-use maintenance restrictions." 627 F.2d at 1112. To the extent the court suggested that only a regulation setting out "quantitative levels of emissions" qualifies as a "standard," it spoke too broadly. EPA has drawn a distinction between "standards" and "accompanying enforcement procedures," *ibid.*, but it has made clear that the term "standard" includes both emissions-related criteria and the imposition of such criteria on an identified group of vehicles. See *AIAM*, 208 F.3d at 6-7. The Act itself uses the term in that way, providing that federal emissions regulations shall "contain standards which provide that emissions from a percentage of each manufacturer's sales volume" will meet particular criteria. See CAA 202(g), 42 U.S.C. 7521(g). As the First Circuit pointed out, Section 209(a)'s use of the term "standard" should not be read to exclude state regulation, such as the Fleet Rules, whose "very purpose and effect * * * is to effect a quantitative reduction in emissions." *AIAM*, 208 F.3d at 7 (reconciling *MEMA*).

operators" (Pet. App. 21a) is also without merit. The district court conceded that EPA and the courts of appeals that have addressed the issue have concluded that state regulations requiring that a specified percentage of new vehicles sold within the State have certain emission characteristics "must be considered a standard 'relating to the control of emissions.'" *AIAM*, 208 F.3d at 6; *AAMA*, 152 F.3d at 200. That conclusion is sound. Such "sales requirements," which control emissions from new vehicles by prescribing the number and emission levels of new vehicles that a manufacturer may sell, are inescapably "standard[s] relating to the control of emissions." CAA § 209(a), 42 U.S.C. 7543(a). As EPA explained in response to inquiries from the First Circuit,

> Setting the link between the emission limit and the applicability of the limit to a particular number of vehicles is an inherent part of the standard setting process.

AIAM, 208 F.3d at 6 (quoting EPA letter (Sept. 15, 1999)); see *id.* at 3-5 (describing the court's request for EPA's views). There is no basis for concluding that analogous "purchase requirements" that seek to achieve the same end are not likewise preempted.

The district court's distinction is untenable as a textual matter because Section 209(a)'s prohibition of "any standard relating to the control of emissions from new motor vehicles" makes no distinction between state requirements that control new vehicle emissions by regulating what residents buy rather than by regulating what manufacturers produce and sell. Such distinctions would make little sense, because every purchase of a new vehicle results in a sale, and a state regulation that restricts what a resident can purchase correspondingly limits what the manufacturer can produce for sale. Under the district court's illusory distinction, a State could unilaterally subject manufacturers to that

State's own unique regime of new vehicle emission control requirements simply by casting those requirements in terms of what types of vehicles its residents are allowed to buy. Every State would then be free to adopt its own emissions standards, subjecting automobile manufacturers to the very patchwork of varying state regulations that Congress crafted Section 209(a) to avoid.

The district court was also mistaken in distinguishing the Fleet Rules on the basis that they "require purchasers to choose from among a subset of previously [CARB-]certified California vehicles." Pet. App. 23a. The Fleet Rules run afoul of Section 209(a) precisely *because* they require fleet operators to select from only a subset of the vehicles that EPA has authorized CARB to certify for sale in California. For example, the CARB standards allow, but do not require, manufacturers to produce alternative-fueled vehicles. See Cal. Code Regs. tit. 13, § 1956.8 (2003). By contrast, four of the Fleet Rules *require* use of alternative-fueled vehicles, subject to limited exceptions. See Rules 1186.1, 1193, 1194 (as to heavy vehicles), 1196 (J.A. 16, 52, 58, 66). Similarly, CARB's Urban Bus Program allows bus manufacturers to choose between an alternative-fuel path and a diesel path, Cal. Code Regs. tit. 13, § 1956.2 (2003), but Rule 1192 requires that buses purchased for fleets in the SCAQMD be alternative-fueled, and thus narrows CARB's two paths to one. See J.A. 46. While CARB's regulations allow manufacturers flexibility in determining what mix of LEV and ULEV vehicles to produce, Cal. Code Regs. tit. 13, § 1960.1 (2003), Rules 1191 and 1194 compel purchase of specified percentages of those vehicles. See J.A. 24, 58.

The Fleet Rules accordingly impose additional regulatory requirements for the "control of emissions from new motor vehicles" beyond those found in the CARB standards. CAA § 209(a), 42 U.S.C. 7543(a). Section 209(a) preempts state regulation, even state regulation that is consistent with the

Clean Air Act's substantive requirements, so long as it falls within Section 209(a)'s terms. See *Morales*, 504 U.S. at 387; *Mackey* v. *Lanier Collection Agency & Serv., Inc.*, 486 U.S. 825, 829 (1988). It accordingly prohibits the SCAQMD's unauthorized revision of the CARB rules.[8]

3. The district court also erred in reasoning that Section 246 of the Clean Air Act, 42 U.S.C. 7586, which addresses centrally-fueled vehicle fleets, supports the SCAQMD's claim of authority to promulgate the Fleet Rules. See pp. 5-6, *supra* (discussing the Clean Air Act's "clean-fuel vehicles" provisions). Section 246, which created what is known as the "Clean Fuel Fleet Program" (CFFP), directs certain States to modify their SIPs to include specifically prescribed clean-fuel vehicle fleet provisions. See CAA § 246(a), 42 U.S.C. 7586(a). It reflects Congress's understanding that States do not have a general license to impose emission-based restrictions on fleet vehicle purchases, but instead must regulate fleet vehicle emissions in accordance with Congress's instructions. Congress's imposition of substantial conditions on fleet regulation, see CAA § 246(b)-(h), 42 U.S.C. 7586(b)-(h), indicates that Congress did not believe

[8] Significantly, Section 177 of the Clean Air Act allows other States to follow California's example and adopt EPA-approved CARB standards, provided that "such standards are identical to the [CARB] standards" and the State adopts those standards "at least two years before commencement" of the relevant model year. 42 U.S.C. 7507. Section 177 further provides that States adopting the CARB standards may not "prohibit or limit, directly or indirectly, the manufacture or sale of" the CARB-certified vehicles. The SCAQMD is not a State, and therefore not eligible to invoke Section 177. But even States that are eligible to adopt the CARB standards could not adopt analogues of the Fleet Rules, which are not "identical to" the CARB standards and impose purchase requirements that would "limit, directly or indirectly, the manufacture or sale of" the CARB-certified vehicles. *Ibid.*

that States were already free to regulate emissions from vehicle fleets however they chose.[9]

For example, Section 246(a) requires that States participating in the CFFP program submit their fleet regulation programs to EPA as SIP revisions, which assures federal oversight of the State's regulatory provisions. See CAA § 246(a), 42 U.S.C. 7586(a); see also CAA § 110(k)-(*l*), 42 U.S.C. 7410(k)-(*l*) (setting out the process for EPA approval of SIP revisions). Section 246(b) additionally sets out specific phase-in requirements. 42 U.S.C. 7586(b). Section 246(d) requires States to give fleet operators the choice of what type of fuel to use and what type of vehicle to buy, so long as other congressionally-specified requirements are met. 42 U.S.C. 7586(d). Furthermore, Section 249 sets out a carefully circumscribed program to demonstrate the effectiveness of clean-fuel vehicles. 42 U.S.C. 7589. Congress specifically provided in Section 249(f)(4) that this program could not incorporate any "production *or sales* mandates for clean-fuel vehicles or clean alternative fuels," 42 U.S.C. 7589(f)(4) (emphasis added), signaling that mandatory programs like the Fleet Rules are not within State authority. See also 42 U.S.C. 7590(b) (stating that Part C of Title II does not grant EPA authority to adopt "production [m]andates" or "to specify as applicable the models, lines, or types of, or marketing or price practices, policies, or strategies for, vehicles subject to this part"). And the Clean Air Act elsewhere defines the critical terms. See, *e.g.*, CAA § 241(2) ("clean alternative fuel"), (5) ("covered fleet"), (6) ("covered fleet vehicle"), and (7) ("clean-fuel vehicle"), 42 U.S.C. 7581(2), (5), (6), and (7).

[9] In a similar manner, certain state fuel programs mandated by Congress under Section 211(m) are exempt from the reach of the general preemption provision in Section 211(c)(4)(A). See *Exxon Mobil Corp.* v. *EPA*, 217 F.3d 1246 (9th Cir. 2000).

Section 246 and its allied provisions demonstrate the care with which Congress calibrated the Clean Air Act's provisions balancing federal and state authority over fleet vehicle emissions. That balanced structure cannot be reconciled with a reading of the Act that would allow unlimited and disparate state and local regulation of new fleet vehicle purchases. Contrary to the district court's conclusion, Section 246 and the allied provisions reflect the understanding, set out explicitly in Section 209(a), that the federal government largely occupies the field of establishing emissions criteria that new motor vehicles must meet, and States (and their political subdivisions) may regulate new fleet vehicle purchases only in accordance with EPA's oversight and the Clean Air Act's design.

4. The district court also erred in relying on the general principle that state health and safety regulations "are presumed to be valid." Pet. App. 24a (citing *Medtronic, Inc.* v. *Lohr*, 518 U.S. 470, 475 (1996)). That general principle must yield to the specific language of the Clean Air Act. Congress expressly recognized, through Section 116, that States generally retain authority to regulate air pollution, but Congress specifically conditioned that principle through the limitations set out in Section 209. See CAA § 116, 42 U.S.C. 7416. Section 209(a), in turn, broadly preempts state standards "relating to the control of emissions from new motor vehicles." 42 U.S.C. 7543(a). That prohibition, by its terms, reaches the SCAQMD's Fleet Rules. The general principle that "state regulations are presumed to be valid" in the absence of countervailing indicia of congressional intent cannot overcome Section 209(a)'s specific provisions preempting the state regulations at issue. See *Morales*, 504 U.S. at 384-385 (a general savings clause is subject to a specific preemption provision).

The Clean Air Act does not leave the SCAQMD without further recourse. The SCAQMD may request the State of

California to seek EPA approval of appropriate rules governing vehicle fleet operations through the avenues that Congress expressly provided. Section 209(b) specifically authorizes EPA to waive Section 209(a)'s prohibition upon satisfaction of the conditions prescribed therein. See 42 U.S.C. 7543(b). In addition, the State of California may be entitled to place restrictions on the types of new public vehicles that the State and its instrumentalities purchase for their own use. See *Building & Constr. Trades Council of Metro. Dist.* v. *Associated Builders & Contractors*, 507 U.S. 218, 231-232 (1993) ("In the absence of any express or implied indication by Congress that a State may not manage its own property when it pursues its purely proprietary interests, and where analogous private conduct would be permitted, this Court will not infer such a restriction."). But the court of appeals erred in affirming the district court's resolution of the issue that is now before this Court. Section 209(a) preempts the Fleet Rules because they are "standard[s] relating to the control of emissions from new motor vehicles" and California has neither sought nor received a waiver of Section 209(a)'s prohibition in accordance with Section 209(b). See 42 U.S.C. 7543(a) and (b).

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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